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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.375 OF 2007
IN
CHAMBER SUMMONS NO.1343 OF 2006
IN
SUIT NO.1165 OF 1979

NRC Limited ... Appellants

Vs.

The New India Assurance Co. Ltd. ... Respondents

Mr. Satish Shah with Mr. Sujit S. Suryavanshi i/b M/s. Vijil Jursi for the appellants.

Mr. D.D. Madon, senior counsel i/b Mr. F. Dabash i/b Mulla & Mulla & C. B. & C. for the respondents.

CORAM : SMT. RANJANA DESAI &
D. B. BHOSALE, JJ.

DATED : 26TH JUNE, 2007.

P.C.:-

1. The order dated 22/2/2007 passed by the learned single Judge dismissing the Chamber Summons taken out by the plaintiffs for an order to recast the issues is challenged by the appellants-plaintiffs in this appeal.

2. We have heard the learned counsel for the appellants-plaintiffs and the learned counsel for the respondents-defendants.

3. The learned counsel for the respondents has raised a preliminary

objection that the appeal is not maintainable. Prima facie, it does appear to us that the appeal is not maintainable. Assuming however that the appeal is maintainable, we are not inclined to interfere with the order passed by the learned single Judge, which is impugned in this appeal. It is apparent that the appellants-plaintiffs at this stage when the evidence is led and the matter is closed for arguments want to delete certain issues. In our opinion, such deletion cannot be allowed at this stage when the evidence is led and the matter is closed for arguments. However, it will be open to the appellants-plaintiffs to raise the contention before the trial court at the time of final arguments that these issues do not arise. Needless to say that if such an argument is advanced, the learned Judge shall deal with it in accordance with law.

4. Appeal is disposed of accordingly.

[SMT. RANJANA DESAI, J.]

[D. B. BHOSALE, J.]